Supreme Court, U.S.
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In the

Supreme Court of the United States

THE STATE OF ILLINOIS,

Petitioner,

vs.

MARY BRAGGS,

Respondent.

On Petition for Writ of Certiorari to
the Supreme Court of Illinois

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a court must consider a defendant's mental capacity when determining whether the defendant was "in custody" for purposes of *Miranda v. Arizona*.

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PETITION FOR A WRIT OF CERTIORARI

The State of Illinois respectfully petitions for a writ of certiorari to review the judgment of the Illinois Supreme Court in this case.

OPINIONS BELOW

The opinion of the Illinois Supreme Court (App. 1 - App. 26) is reported at 209 Ill.2d 492, — N.E.2d — (2004). The opinion of the Illinois Appellate Court, First District (App. 27- App. 50), is reported at 335 Ill.App.3d 52, 779 N.E.2d 475 (2002). The November 17, 2000 order of the circuit court denying the respondent's motion to suppress (App. 51) is unreported. The opinion of the Illinois Appellate Court, First District (App. 52-59), in the respondent's first direct appeal is reported at 302 Ill.App.3d 602, 707 N.E.2d 172 (1998).

STATEMENT OF JURISDICTION

The original order and judgment of the Illinois Supreme Court was entered on December 18, 2003. The State filed a petition for rehearing. The Illinois Supreme Court entered its final order and judgment on April 15, 2004 when it denied the petition for rehearing and modified its opinion upon the denial of the petition. This petition for a writ of certiorari is filed within ninety days of that final order. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part: "No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . . ."

STATEMENT OF THE CASE

Respondent Mary Braggs was charged under Indictment No. 93 CR 16707 for the murders of Connie Hall and Donald Rudolph. App. 1. The trial court initially refused to conduct a hearing on respondent's Motion to Suppress Statements. App. 1. The trial court found respondent unfit to stand trial and a discharge hearing followed. App. 1. During the discharge hearing, the trial court found that the evidence introduced against respondent was sufficient to establish beyond a reasonable doubt her guilt of first degree murder. App. 1. The trial court then remanded respondent to the Department of Mental Health and Developmental Disabilities for a period of five years. App. 1. In her first appeal, respondent argued that the trial court erred in refusing to conduct a hearing on her motion to suppress statements and that the evidence was not sufficient to establish proof beyond a reasonable doubt. App. 1. The appellate court held that the trial court erred when it refused to conduct a hearing on respondent's motion. App. 1. It also found that the evidence was sufficient beyond a reasonable doubt. App. 1. The appellate court then ordered the trial court to hear respondent's Motion to Suppress Statements. App. 1.

A hearing on respondent's Motion to Suppress Statements was held before the Honorable Stanley Sacks. App. 1-2, 51. During the hearing, the State presented the testimony of Chicago Police Detective Edward Winstead.

App. 1, 3. On April 29, 1993, Detective Winstead was assigned to investigate the deaths of Donald Rudolph and Connie Hall. App. 3. Both victims were found murdered in a first floor apartment located on South Prairie Avenue. App. 3. Connie had been stabbed to death, and Donald had been strangled. App. 3.

During Detective Winstead's investigation, he learned of a woman, later identified as respondent, who might have information relating to the crime. App. 3. On May 7, 1993, Detective Winstead received a phone call from a woman named Survilla Cameron, who stated that she lived with respondent and was respondent's sister and guardian. App. 3. She also told Detective Winstead that he could come over and talk to respondent. App. 3. Detective Winstead took Cameron and respondent to the police station to talk with them. App. 3. Prior to questioning, Cameron informed Detective Winstead that respondent was mentally incompetent and that respondent was "slow." App. 3. At the police station, Detective Winstead, Detective Redmond, Cameron, and respondent went into an interview room. App. 3. Respondent was not advised of her *Miranda* rights. App. 3.

During the conversation, respondent told them that she had been in the apartment on the day of the murders and two black males had come to the door. App. 4. According to respondent, an argument ensued, and she said that she had hidden in the closet. App. 4. Respondent told the police that when she came out of the closet, victim Hall was dead in the bedroom. App. 4. Respondent explained that Hall was wearing white and appeared to have been stabbed to death. App. 4. According to respondent, victim Rudolph was in the front room. App. 4. Respondent stated that Rudolph had been hit in the head with a wrench and had been strangled. App. 4. Detective Winstead noted that this was very similar to how the victims were found. App.

4. After the conversation, Detective Winstead brought respondent and Cameron home. App. 4.

On May 9, 1993, Detective Winstead and Detective Redmond went back to respondent's house. App. 4. They spoke to respondent, and Cameron was also present. App. 4. Respondent told them that one of the men who came to the apartment was named "Ron" and that he was a friend of a man named Cleo. App. 5. The other man was tall. App. 5. Pursuant to his investigation, Detective Winstead learned the identities of "Ron" and the tall man (named "Mike") and eventually picked up the two men and brought them to the police station. App. 5. The detective then went back to respondent's apartment and brought respondent and her sister to the police station. App. 5.

At the police station, Detective Winstead showed respondent a picture of Ron and Mike. App. 5. Respondent said that Mike was one of the men but that she was not sure about the other man. App. 5. Detective Winstead then told respondent that the two men were at the station. App. 5. Respondent then changed her story and said that they were not the two men who were at the apartment that day. App. 5. She then repeated her story that she hid in the closet. App. 5.

Later that same afternoon, Detective Winstead went with respondent and her sister to the apartment where the murders were committed. App. 5. Respondent pointed out where the bodies were found. App. 5. Respondent also showed Detective Winstead the closet in which she hid during the murders. App. 5. Detective Winstead examined the closet and noticed that the closet was filled with various items and that a person could not have fit inside it. App. 5. He then took respondent and her sister back to their home. App. 5-6.

On May 12, 1993, Detective Winstead picked up respondent and her sister and attempted to have a polygraph

examination administered to respondent. App. 6. The test could not be completed because respondent did not register enough emotion. App. 6. Detective Winstead subsequently brought respondent and Cameron home. App. 6. Respondent and Cameron subsequently changed residences. App. 6.

On June 25, 1993, Detective Winstead and Detective Redmond went to respondent's new apartment and picked up respondent and Cameron, respondent's sister. App. 6. They took them to the police station for further questioning. App. 6. Prior to the questioning, Detective Winstead told Cameron that the police were now looking at respondent as a potential suspect. App. 6. Detective Winstead read respondent her *Miranda* rights. App. 6. Respondent agreed to waive her rights. App. 6. After the conversation, respondent was placed under arrest. App. 7. Shortly after, respondent was interviewed by an assistant state's attorney, who also advised her of her *Miranda* rights. App. 7.

During the hearing on respondent's Motion to Suppress Statements, respondent presented the testimony of two psychologists. App. 7-8. Both Dr. Philip Pan and Dr. Linda Wetzel testified that respondent was unable to understand her *Miranda* rights. App. 7, 9. Dr. Pan noted that he examined respondent once in May of 1996 and once in August of 1999. App. 7. After conducting initial tests, he concluded that she suffered from moderate mental retardation and that she was unfit to stand trial. App. 7. Dr. Pan believed that it was unlikely that she could be restored to fitness any time in the near future. App. 7. When he tested her again in August of 1999, he continued to believe that she was not able to understand the *Miranda* warnings. App. 7. Dr. Wetzel testified that she examined respondent in May of 1994 and concluded that respondent was in the mentally retarded range and that she was unable to

understand her *Miranda* rights. App. 8. She tested respondent again in October of 1999 and reached the same conclusion. App. 9.

After hearing arguments from both sides, the trial court concluded that respondent did not knowingly waive her *Miranda* rights. App. 11. When considering whether or not she was in custody during her discussions with the police, the court concluded that up until the point where she was arrested, she was never in custody. App. 10-11. Moreover, the trial court determined that there was not even a suggestion that the police had done anything to coerce her into giving that statement. App. 10. The warnings given to her the morning of her arrest by Detective Winstead were "gratuitously offered" to her. App. 11. The court, however, further held that the statements made to the assistant state's attorney after the arrest were in violation of *Miranda*. App. 11. The court granted respondent's motion with regard only to the statements made to the assistant state's attorney after respondent's arrest and denied it as to respondent's first statement to the police, which was non-custodial and made without police coercion. App. 10-11.

On appeal, respondent argued that she was in custody at the time she arrived at the police station and gave her first statement, that the trial court's determination that she was not in custody until after her first statement was wrong, and that her waiver of her *Miranda* rights before her first statement was not valid. Respondent also argued that she did not speak to the police voluntarily in light of her mental capacity and that the trial court was required to hold a new discharge hearing. In its opinion, the appellate court never addressed whether respondent was in custody when she initially arrived at the police station. Instead, the appellate court held that it did not matter if respondent was in custody or that there was no police

coercion. App. 44. The Appellate Court held that the trial court erred by not determining "in a State law sense" whether respondent's statement was voluntary under the Due Process Clause of the Fourteenth Amendment solely based on respondent's diminished mental capacity "to understand the meaning and effect of the confession." App. 44, 50. The Appellate Court then reversed the trial court's order denying the motion to suppress the statements and remanded for a new hearing on the motion to suppress. App. 50.

The Illinois Supreme Court allowed the State's petition for leave to appeal. App. 3. Modifying the objective reasonable person standard for determining custody for purposes of *Miranda*, the Illinois Supreme Court held that respondent was in custody when she gave her first statement to the police because "a reasonable person with defendant's mental capacity would have believed he or she was in custody and not free to leave the police station." App. 19. The Illinois Supreme Court reached that conclusion by relying heavily on the Ninth Circuit Court of Appeals' decision in *Alvarado v. Hickman*, 316 F.3d 841, 848 (9th Cir. 2002), which this Court subsequently rejected in *Yarborough v. Alvarado*, 541 U.S. —, 124 S.Ct. 2140, 2151-52 (2004). App. 15-17. After a lengthy discussion of the Ninth Circuit's reasoning, the Illinois Supreme Court concluded that "[t]he same rationale that requires modification of the reasonable person standard to take into account the general characteristics of juveniles also militates in favor of such a modification where the mentally retarded are concerned." App. 17. The Illinois Supreme Court then affirmed the appellate court's decision to suppress the statements respondent made to the detective prior to her formal arrest. App. 26. Given the Illinois Supreme Court's disposition of the custody issue, it expressly declined to reach the voluntariness issue on which the appellate court had based its decision. App. 26.

REASONS FOR GRANTING THE PETITION

I. THE ILLINOIS SUPREME COURT'S CONSIDERATION OF THE DEFENDANT'S MENTAL CAPACITY IN DETERMINING WHETHER THE DEFENDANT WAS "IN CUSTODY" UNDER *MIRANDA* CONFLICTS WITH *YARBOROUGH V. ALVARADO* AND OTHER DECISIONS OF THIS COURT HOLDING THAT THE CUSTODY INQUIRY IS AN OBJECTIVE TEST.

Adopting the reasoning in *Alvarado v. Hickman*, 316 F.3d 841, 848 (9th Cir. 2002), which this Court subsequently rejected in *Yarborough v. Alvarado*, 541 U.S. —, 124 S.Ct. 2140, 2151-52 (2004), the Illinois Supreme Court wrongly modified the objective test for determining custody under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1965), to include the consideration of the suspect's mental capacity. App. 15-17. The Ninth Circuit in *Alvarado*, 316 F.3d at 848, held that the objective custody test should be modified to include the consideration of a suspect's age and juvenile status. This Court, however, recently reversed the Ninth Circuit and rejected the notion that the objective custody test under *Miranda* should include the consideration of the suspect's individual characteristics, including the suspect's age. *Yarborough v. Alvarado*, 541 U.S. —, 124 S.Ct. 2140, 2151-52 (2004). As a result, the decision of the Illinois Supreme Court on this important federal constitutional question conflicts with this Court's recent decision in *Alvarado* as well as with this Court's consistent rule that the *Miranda* custody inquiry is an objective, not a subjective, test. Tellingly, not even once in its opinion does the Illinois Supreme Court ever acknowledge that the *Miranda* custody test is an objective one.

The Illinois Supreme Court held that the characteristics of the particular suspect must be incorporated into the

Miranda custody test when the suspect is mentally retarded. App. 15. In justifying that conclusion, the court relied heavily on the Ninth Circuit's decision in *Alvarado*, where the Ninth Circuit modified the objective reasonable person standard "to reflect what a reasonable juvenile would have thought in defendant's position" and "seemingly sanctioned a reasonable-juvenile standard to be applied to the determination of custodial interrogation." App. 15-17, *citing Alvarado*, 316 F.3d at 848. After a lengthy discussion of the Ninth Circuit's reasoning, the Illinois Supreme Court concluded that "[t]he same rationale that requires modification of the reasonable person standard to take into account the general characteristics of juveniles also militates in favor of such a modification where the mentally retarded are concerned." App. 17. The court then applied its modified custody test and concluded that "a reasonable person *with defendant's mental capacity* would have believed he or she was in custody and not free to leave the police station." App. 19 (emphasis added).

The Illinois Supreme Court's so-called "modification" to the reasonable person standard transformed the objective *Miranda* custody test into a subjective one. The Illinois Supreme Court has now effectively substituted a subjective custody test, which incorporates the suspect's particular characteristics, for this Court's objective test. This conflicts with this Court's decision in *Alvarado*, which rejected the Ninth Circuit's reasoning, and this Court's consistent series of rulings that the *Miranda* custody inquiry is an objective test.

In *Alvarado*, this Court adhered to the objective custody test, noting that "[o]ur opinions applying the *Miranda* custody test have not mentioned the suspect's age, much less mandated its consideration." *Alvarado*, 124 S.Ct. at 2151. While the Illinois Supreme Court, like the Ninth Circuit in *Alvarado*, attempted to equate the *Miranda*

custody test with other inquiries, such as the voluntariness of a statement, that incorporate a person's individual characteristics, this Court explained that "[t]here is an important conceptual difference between the *Miranda* custody test and the line of cases from other contexts considering age and experience." *Ibid.* "The objective test furthers 'the clarity of [*Miranda*'s] rule,' . . . ensuring that the police do not need 'to make guesses as to [the circumstances] at issue before deciding how they may interrogate the suspect.'" *Ibid.* (*quoting Berkemer v. McCarty*, 468 U.S. 420, 430-31 (1984)).

The objective test necessarily focuses on the restrictive circumstances themselves rather than on the suspect's perceptions of them because "the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Behler*, 463 U.S. 1121, 1125 (1983) (*quoting Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)). This Court has observed that "[o]ur decisions make clear that the initial determination of custody depends on the *objective* circumstances of the interrogation, *not on the subjective views harbored by* either the interrogating officers or *the persons being questioned.*" *Stansbury v. California*, 511 U.S. 318, 323 (1994) (emphasis added). To determine whether the circumstances surrounding the questioning are sufficiently restrictive to constitute custody, this Court has looked to "how a reasonable man in the suspect's position would have understood his situation." *Berkemer*, 468 U.S. at 442.

This Court observed in *Alvarado* that "[i]t is possible to subsume a subjective factor into an objective test by making the latter more specific in its formulation." *Alvarado*, 124 S.Ct. at 2151. The Ninth Circuit did just that when it "styled its inquiry as an objective test by considering what a 'reasonable 17-year-old, with no prior

history of arrest or police interviews' would perceive." *Ibid.* The Illinois Supreme Court, in following the Ninth Circuit's reasoning, did the same when it stated that "a reasonable person with defendant's mental capacity would have believed that he or she was in custody and not free to leave the police station." App. 19.

The Illinois Supreme Court's decision disregards this Court's objective custody test under *Miranda* and conflicts with this Court's decisions on this issue, including *Alvarado*. Just as the Ninth Circuit did in *Alvarado*, the Illinois Supreme Court "ignored the argument that the custody inquiry states an objective rule designed to give clear guidance to the police, while consideration of a suspect's individual characteristics . . . could be viewed as creating a subjective inquiry." *Alvarado*, 124 S.Ct. at 2151-52. The Illinois Supreme Court relied heavily on the Ninth's Circuit's reasoning in effectively creating a subjective custody test that incorporates the characteristics of the suspect into the inquiry. This Court, of course, disagreed with the Ninth Circuit's reasoning and reversed its decision. *Ibid.* As a result, the decision of the Illinois Supreme Court in this case conflicts with this Court's decisions concerning the objective *Miranda* custody test, including *Alvarado*. Accordingly, petitioner respectfully requests that this Court grant *certiorari* or, in the alternative, vacate the Illinois Supreme Court's decision and remand for reconsideration in light of *Alvarado*.

II. THE ISSUE OF WHETHER THE OBJECTIVE CUSTODY TEST SHOULD CONSIDER THE SUSPECT'S PARTICULAR CHARACTERISTICS HAS NOT BEEN SQUARELY RESOLVED BY THIS COURT.

This case presents this Court with the opportunity to decide whether the *Miranda* custody test should include a consideration of the suspect's personal characteristics on direct appeal, outside the shadow of the standard of review under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). While this Court has repeatedly held that the *Miranda* custody inquiry is an objective one, and disagreed in *Alvarado* with the argument that this Court's prior cases *mandated* the consideration of a suspect's particular characteristics as part of the custody test, this Court did not squarely decide this issue on the merits in *Alvarado*.

This Court's rejection in *Alvarado* of the Ninth Circuit's consideration of the suspect's age and experience with the police into the "custody" test was made in the context of the standard set forth by the AEDPA. Under the AEDPA, "a federal court can grant an application for a writ of habeas corpus on behalf of a person held pursuant to a state-court judgment if the state-court adjudication 'resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.'" *Alvarado*, 124 S.Ct. at 2144 (quoting 28 U.S.C. § 2254(d)). Although this Court appeared to reject consideration of a suspect's individual characteristics when applying the objective *Miranda* custody test, this Court's reasoning was limited to whether the state court had unreasonably applied clearly established federal law when it failed to consider the defendant's age and experience. *Id.* at 2152 ("For these reasons, the state court's failure to

consider Alvarado's age does not provide a proper basis for finding that the state court's decision was an unreasonable application of clearly established law"). In fact, Justice O'Connor, in her concurring opinion, stated that "[t]here may be cases in which a suspect's age will be relevant to the *Miranda* 'custody' inquiry." *Id.* at 2152 (O'Connor, J., concurring).

Given the standard of review applied in *Alvarado*, this Court did not have the opportunity to decide this issue squarely. As one court has noted, "[a]s is apparent, *Alvarado* did not strictly decide whether an accused's juvenile status is irrelevant to the *Miranda* custody determination. That was unnecessary for its decision." *United States v. Little*, — A.2d —, No. 03-CO-452, 2004 D.C. App. LEXIS 337, *14 (June 24, 2004). Free from the strictures of the AEDPA, this case presents the Court with the opportunity to squarely decide the issue of whether the objective *Miranda* custody test should incorporate a suspect's personal characteristics, such as a suspect's mental capacity, as part of that inquiry. This case will enable the Court to finally address this issue directly.

III. THE STATE COURTS HAVE SPLIT OVER WHETHER A SUSPECT'S MENTAL CAPACITY MAY BE CONSIDERED IN MAKING A *MIRANDA* "CUSTODY" DETERMINATION.

Without this Court's guidance, the state courts that have considered this important issue are in conflict. Of the state courts that have directly addressed the issue of considering a mentally retarded suspect's mental capacity when determining if that suspect was in custody for purposes of *Miranda*, two state courts have held that a suspect's mental capacity should be considered, while two other state courts have held that it should not.

As explained above, the Illinois Supreme Court held below that the reasonable person standard for determining custody under *Miranda* must be modified to take into account the mental capacity of a suspect when that suspect is mentally retarded. App.17-19. In applying that modified reasonable person standard, the Illinois Supreme Court concluded that "a reasonable person with defendant's mental capacity would have believed he or she was in custody. . . ." App. 19. Similarly, the Court of Criminal Appeals of Tennessee has held that one factor courts should consider in determining whether a suspect was in custody for purposes of *Miranda* is "the age and mental capacity of [the] defendant." *State v. Loveday*, C.C.A. No. 100, 1990 Tenn. Crim. App. LEXIS 438, *6 (Tenn. Crim. App., July 5, 1990). In *Loveday*, the court considered the fact that the defendant was mildly mentally retarded in concluding that a reasonable person in the defendant's position would have believed he was in custody and entitled to *Miranda* warnings. *Loveday*, 1990 Tenn. Crim. App. LEXIS 438, *6-*8; *see also State v. Hickam*, 692 P.2d 672, 676 (Or. Ct. App. 1989) (affirming the trial court's finding that the defendant was not in custody for purposes of *Miranda* even when the defendant's mental retardation was considered).

In contrast, the Kansas Supreme Court and the Court of Appeals of North Carolina both reject the incorporation of personal characteristics such as a mentally retarded suspect's mental capacity when applying the objective reasonable person test under *Miranda*. Following its consistent precedent over the years on this precise issue, the Kansas Supreme Court expressly held that "'the proper analysis of whether a person is "in custody" is an *objective* analysis that *ignores* subjective beliefs, personality, and *mental capacity* of the defendant.'" *State v. Washington*, 68 P.3d 134, 148 (Kan. 2003) (emphasis added), *quoting State v. William*, 248 Kan. 389, 405, 807 P.2d 1192, cert. denied

502 U.S. 837 (1991), *citing State v. Fritschen*, 247 Kan. 592, 600-03, 802 P.2d 558 (1990).[1] In applying the objective reasonable person test, the North Carolina court rejected the defendant's argument "that a sixteen-year-old, mentally retarded boy would have believed himself to be in custody. . . ." *State v. Jones*, 570 S.E.2d 128, 134 (N.C. Ct. App. 2002). Observing that the custody inquiry was an objective test, and quoting from this Court's holding in *Stansbury* that "'the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation,'" the court held that the defendant was not in custody when he made his statements. *Jones*, 570 S.E.2d at 134 (*quoting Stansbury*, 511 U.S. at 324).

While never directly addressing the issue, several other courts have applied the objective test without considering a mentally retarded defendant's mental capacity and found the defendants not to be in custody. *See People v. Hamilton*, 831 P.2d 1326, 1330 (Colo. 1992) (refusing to modify the objective reasonable person standard for determining custody even though the defendant had an IQ of 45); *DeJesus v. State*, 655 A.2d 1180, 1190-91 (Del. 1995) (applying the objective reasonable person standard, holding that the defendant was not in custody when he gave his statements even though the defendant had a low

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[1] In explaining that this Court held in *Berkemer v. McCarty*, 468 U.S. 420 (1984), that "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation," Professor LaFave cited favorably to the Kansas Supreme Court's decision in *Fritschen*, noting that "[a]ccordingly, it was held in *State v. Fritschen*, 247 Kan. 592, 802 P.2d 558 (1990), the state court must discard that prong of a previously utilized five-factor analysis that looked to the 'nature of the suspect' in assessing whether the suspect had been in 'custody' for *Miranda* purposes." 2 Wayne R. LaFave, Jerold H. Israel & Nancy J. King, *Criminal Procedure*, § 6.6(c), p.526 n.32 (2d ed. 1999).

I.Q.); *Commonwealth v. Wallen*, 619 N.E.2d 365, 366-67 (Mass. App. Ct. 1993) (no *Miranda* warnings were required because the mentally retarded defendant was not in custody; the court did not discuss the defendant's mental capacity when making the custody determination); *People v. Dorsey*, 499 N.Y.S.2d 806, 807 (N.Y. App. Div. 1986) (same); *State v. Stauter*, C.A. Case No. 97 CA 72, 1998 Ohio App. LEXIS 3311, *16-*20 (Ohio Ct. App. July 17, 1998) (same); *see also United States v. Macklin*, 900 F.2d 948, 950-51 (6th Cir.), cert. denied, 498 ~~U.S.~~ 840 (1990) (applying the objective reasonable person standard without modification even though the defendants were mentally retarded).

In short, the state courts are in conflict over whether the objective reasonable person test should be modified to include the consideration of a mentally retarded suspect's mental capacity. In light of the importance of this federal constitutional question, the existing conflict warrants this Court's resolution.

IV. A STANDARD THAT FORCES THE POLICE TO ASSESS A SUSPECT'S MENTAL CAPACITY IN ORDER TO DETERMINE WHETHER THAT SUSPECT WOULD BELIEVE HIMSELF OR HERSELF TO BE IN CUSTODY IS UNWORKABLE AND UNDERMINES THE CLARITY AND PURPOSE OF THE OBJECTIVE *MIRANDA* TEST.

The police will rarely be able to quickly and accurately judge the mental capacity of a suspect and the effect of that suspect's mental capacity on his or her belief regarding whether he or she is in custody for purposes of

Miranda.[2] As this Court "ha[s] stressed on numerous occasions, '[o]ne of the principal advantages' of *Miranda* is the ease and clarity of its application." *Moran v. Burbine*, 475 U.S. 412, 425 (1986), *quoting Berkemer*, 468 U.S. at 430. The rule in *Miranda* has the "important virtue of informing police and prosecutors with specificity as to how a pretrial questioning of a suspect must be conducted" in order for custodial interrogation to result in admissible statements. *Colorado v. Spring*, 479 U.S. 564, 577 n.9 (1987). This Court has recognized the importance of providing a "workable rule 'to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.'" *New York v. Quarles*, 467 U.S. 649, 658 (1984) (*quoting Dunaway v. New York*, 442 U.S. 200, 213-14 (1979)).

Requiring the police to conduct what amounts to an ad-hoc, on-the-scene psychiatric or IQ exam in order to determine whether a suspect's mental capacity may make him believe he is in custody will eliminate the clarity of the *Miranda* rule. As this Court has observed, "an objective, reasonable-man test is appropriate because, unlike a subjective test, it . . . 'does [not] place upon the police the

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[2] Dissenting in *Alvarado*, Justice Breyer stated that the suspect's age "is an objective circumstance that was known to the police" and was "not a special quality, but rather a widely shared characteristic that generates commonsense conclusions about behavior and perception." *Alvarado*, 124 S.Ct. at 2155 (Breyer, J., dissenting). Unlike a juvenile suspect's age, a mentally retarded suspect's mental capacity is *not* a widely shared characteristic and *is* a special quality. As this Court noted in *Atkins v. Virginia*, 536 U.S. 304, 309 n.5 (2002), "[i]t is estimated that between 1 and 3 percent of the population has an IQ between 70 and 75 or lower, which is typically considered the cutoff IQ score for this intellectual function prong of the mental retardation definition." A suspect's mental capacity and its impact on the suspect's beliefs regarding custody will often be difficult to gauge.

burden of anticipating the frailties or idiosyncrasies of every person whom they question.'" *Berkemer*, 468 U.S. at 442 n.35 (citation and quotation omitted). Modifying the objective test to account for the mental capacity of a suspect would require the police to do exactly what this Court explained was inappropriate for the custody determination: it would place upon the police the burden of anticipating the frailties of every person they question. A modification to the objective reasonable person standard that would require the police to assess a suspect's mental capacity and its effect on that suspect's belief regarding custody contradicts the long-established reasoning behind the objective *Miranda* custody test.

The difficulties of implementing a rule that requires the police to assess and consider a suspect's mental capacity are stark. In holding that the mentally retarded could not be executed, this Court declined to set forth a standard by which a person may be classified as mentally retarded. *Atkins v. Virginia*, 536 U.S. 304, 317 (2002) (in explaining that it would not define who qualified as mentally retarded, this Court stated that "we leave to the States the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences") (quotation and citation omitted). Highlighting the difficulty in defining who qualifies as mentally retarded, this Court observed in *Atkins* that, "[t]o the extent there is serious disagreement about the execution of mentally retarded offenders, *it is in determining which offenders are in fact retarded.*" *Id.* at 317 (emphasis added). State legislatures are in disagreement over how to define who is mentally retarded.[3] If it is difficult for state legislatures to

[3] For example, Kentucky defines a person as mentally retarded for purposes of capital punishment as a person with an IQ below 70 who also displays "substantial" deficits in adaptive behavior. Ky. Rev. Stat. § 532.130-532.140 (1990). In contrast, Arkansas

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agree on which offenders are retarded, it will be even more difficult for the police who will have to make that determination quickly on the scene.

A review of the clinical definitions of mental retardation show how difficult and burdensome it will be on the police to require them to assess a suspect's mental capacity for purposes of *Miranda*. At the outset of the opinion in *Atkins*, this Court set forth the following clinical definitions of mental retardation:

> The American Association of Mental Retardation (AAMR) defines mental retardation as follows: "*Mental retardation* refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18." Mental Retardation: Definition, Classification, and Systems of Supports 5 (9th ed. 1992).
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> The American Psychiatric Association's definition is similar: "The essential feature of Mental Retardation is significantly subaverage general intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of

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requires an IQ of 65 or below coupled with a "significant" impairment in adaptive behavior. Ark. Code Ann. § 5-4-618 (1993). Other states, such as Indiana, have no minimum IQ standard and list as their sole requirement a "substantial" impairment in adaptive behavior. *See* Ind. Code § 35-36-9-1 (1994) et seq.

> the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (Criterion B). The onset must occur before age 18 years (Criterion C). Mental Retardation has many different etiologies and may be seen as a final common pathway of various pathological processes that affect the functioning of the central nervous system." American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 41 (4th ed. 2000). "Mild" mental retardation is typically used to describe people with an IQ level of 50-55 to approximately 70. *Id.*, at 42-43.

Atkins, 536 U.S. at 308 n.3. While a trained psychiatrist may be able to assess a person's mental capacity under these guidelines after a series of clinical examinations, the police will be unable to do so given the time constraints and lack of psychiatric training. The police do not have the time or the resources to assess on the scene whether a suspect is mentally retarded or to determine what effect that suspect's mental capacity may have on his or her belief regarding custody. More difficult still is assessing the impact of a suspect's mental capacity on that suspect's belief regarding custody when that suspect is merely borderline mentally retarded.

Requiring the police to make a clinical evaluation regarding whether a suspect can be classified as mentally retarded all within moments of contact with that suspect dramatically undermines the clarity and purpose of the objective reasonable person test under *Miranda*. Imposing a requirement that the police assess and consider a suspect's mental capacity and speculate as to how that mental capacity impacts that suspect's individual belief as to whether he or she is in custody transforms the objective *Miranda* test into a subjective one. In order to preserve the

clarity and purpose of the *Miranda* custody inquiry, the test must remain objective without an assessment of a suspect's mental capacity. The Illinois Supreme Court's holding requiring the police to assess a suspect's mental capacity and to consider whether a person with that suspect's mental capacity would believe himself or herself to be in custody raises an important federal constitutional question that conflicts with this Court's prior decisions and decisions of other courts. Accordingly, the resolution of this issue by this Court is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the judgment of the Illinois Supreme Court should be vacated and remanded for reconsideration in light of *Yarborough v. Alvarado*, 541 U.S. —, 124 S.Ct. 2140 (2004).

Respectfully submitted,

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